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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SC MANUFACTURED HOMES, INC., et al., Plaintiffs and Appellants, v. JONATHAN T. TREVILLYAN, Defendant and Respondent.	B180299 (Los Angeles County Super. Ct. No. BC311686)

APPEAL from a judgment of the Superior Court of California, Carl J. West, Judge. Reversed.

The Law Offices of William R. Ramsey, William R. Ramsey for Plaintiffs and Appellants.

Sedgwick, Detert, Moran & Arnold, Gregory H. Halliday, Guy J. Gorlick for Defendant and Respondent.

INTRODUCTION

Plaintiffs and appellants SC Manufactured Homes, Inc., and Charles W. Redick, Jr., (collectively Redick) filed this action. It is based on an alleged conspiracy under

which mobilehome dealers pay kickbacks to park owners for the exclusive right to sell their mobilehomes in the park, thereby, among other things, precluding competition and increasing the cost of mobilehomes. Defendant and respondent Jonathan Trevillyan, an attorney, allegedly participated in this conspiracy. Trevillyan filed a motion to strike the complaint under Code of Civil Procedure section 425.16 (section 425.16), which the trial court granted. Redick now appeals. We reverse.

FACTUAL AND PROCEDURAL BACKGROUND

I. The allegations.

A. *The original complaint.*

Charles W. Redick, Jr., owns and operates SC Manufactured Homes, Inc., a mobilehome dealership. On March 5, 2004, Redick filed a complaint for violation of the Cartwright Act (Bus. & Prof. Code, §§ 16720, 16726), intentional interference with prospective economic advantage, and unfair competition in violation of Business and Professions Code section 17200 et seq. All three causes of action were alleged against all 70 named defendants, including Trevillyan. As to Trevillyan specifically, Redick alleged, among other things, that Trevillyan conspired to "conduct tenant evictions and lien sales in a fraudulent and illegal manner in order to illegally misappropriate the tenants' equity and to obtain their homes to sell to defendant dealers as 'pull-outs'[**1**] so that new model homes can be placed and sold on those spaces." It also alleged that Trevillyan conspired with Parklane, a mobilehome park owner, "to create excuses, real or imagined, to serve three-day notices and file unlawful detainers requesting exorbitant fees in order to force tenants from their homes . . . [U]nder normal circumstances, and without the motive of receiving kickbacks from defendant dealers for the spaces they vacated, these tenants would not have been evicted."

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1 According to Redick, "pull-out" is a term of art in the mobilehome industry. It refers to a used mobilehome a dealer buys to obtain the exclusive rights to the underlying space rather than for the mobilehome's intrinsic value.

B. *The first amended complaint.*

After Trevillyan stated his intent to file a motion to strike the complaint under section 425.16, an anti-SLAPP motion,[2] the trial court gave Redick leave to file an amended complaint. Redick filed the first amended complaint, which alleged the same three causes of action, although it deleted many of the references to the evictions Trevillyan instituted. The amended complaint described the alleged conspiracy to restrain trade between mobilehome park owners and dealers in Santa Clarita. Namely, park owners in Santa Clarita refused "to allow buyers of new homes to locate in the park unless they bought particular homes from [a specific dealer] who provided kickbacks of up to $30,000 to the [park owners and operators] for the exclusive right to place and sell their homes on spaces within the park." This scheme increased mobilehome prices, limited buyers' choices, and prevented competition among mobilehome dealers. The scheme also resulted in "closed parks," i.e., parks that " 'reserve[]' all (or virtually all) of the available spaces in the park to one or more specific dealers for the placement of new model homes until they are sold, leaving none for a potential tenant to lease and place on it a new [mobilehome] purchased from a dealer of his own choice."

Redick refused to participate in the scheme, and therefore was prevented from competing equally. For example, from January 2000 through June 2000, Redick asked Parklane, a mobilehome park, about placing new homes on five vacant spaces. Parklane told Redick new homes were not being allowed into the park, although Redick later found out that defendant LC Homes was allowed to place and sell new mobilehomes on the vacant spaces, which had become available through a series of tenant evictions Trevillyan instituted.

Specifically as to Trevillyan, the amended complaint alleged he is an attorney who specializes in representing mobilehome parks, "including but not limited to the representation of defendant [Scott] Liebert [of Parklane] in his disputes with plaintiffs."

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[2] SLAPP is the acronym for a "strategic lawsuit against public participation." (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 57.)

Trevillyan allegedly conspired with Parklane and "personally engaged in overt acts to further the conspiracy described herein to illegally restrain trade and promote [t]he payment of kickbacks to defendant Parklane owners by mobilehome dealers in order to sell mobilehomes in Parklane and as well as other mobilehome parks." Trevillyan's wrongful acts include "(1) aiding in the conspiracy to sell spaces in mobilehome parks in restraint of free trade by soliciting dealers to purchase mobilehome 'pull-outs' in exchange for promising and providing exclusive use of mobilehome spaces to those dealers for the sale of new mobilehomes in restraint of trade, (2) obtaining personal financial remuneration directly and indirectly from dealers in the form of fraudulently inflated and unreasonable lien claims for attorney's fees against mobilehomes, in exchange for promising and providing exclusive use of mobilehome spaces to those dealers for the sale of new mobilehomes in restraint of trade, and [3] unethically harassing tenants he had evicted by coercing them to sell their mobilehomes as 'pull-outs' to dealers selected by Trevillyan for the exclusive use of the space by those dealers to sell new mobilehomes in a manner that is in restraint of trade."

For example, in 1998 Parklane began evicting a large number of tenants. "[T]o facilitate the conspiracy, [] Trevillyan often claimed an unreasonable attorney's fee as a lien against the [mobilehome] owned by the evicted tenant that was superficially inflated to include a kickback" to Parklane's owner. Trevillyan claimed a lien against one home in the amount of $6,800 for legal work in connection with an eviction when the standard rate in the community was $750. His inflated lien claim "facilitated the abandonment by the evicted tenant of the older home because its redemption price was likewise inflated by the fee" allowing Parklane to obtain the home for resale to a dealer as a " 'pull-out' and allowing them to collect their kickback from the sales proceeds."

Redick also bought a pull-out in April 2002 for which he paid $6,915.65 to the park owner to satisfy back rent and Trevillyan's attorney fees, which, according to the park owner's breakdown, amounted to $3,264. But Trevillyan's "advertised" fee for the lien sale was only $1,500. Trevillyan collected a similar unreasonable fee in connection with another pull-out in June 2002. Trevillyan also told one of Redick's salespersons, in

January 2004, to buy a pull-out home owned by a tenant he was in the process of evicting, and that in addition to the home's value, Redick would have to pay attorney fees, which were " '$3,000 and rising,' " although the standard charge for an eviction is $750.

Also in January 2004, the managers of Boulders Ranch mobilehome park requested almost $5,000 from the sale of Jacqueline Martens's pull-out, when her judgment was only $1,713.40 in back rent, $350 in attorney fees, and $399.30 in costs. Martens was told the additional amount was for Trevillyan's fees, even though the court had set his fees at $350 and had rejected his request for $1,200. Trevillyan has, therefore, "engaged in a pattern and practice of conspiring with all of the defendant [mobilehome] parks to conduct and [*sic*] lien sales in a fraudulent and illegal manner in order to illegally misappropriate the tenants' equity and to obtain their homes to sell to defendant dealers as 'pull-outs' so that new model homes can be placed and sold on those spaces."

Trevillyan's knowledge of this conspiracy is evidenced by statements he made to Redick that Lilly of the Valley mobilehome park "accepts graft" and that Redick and Parklane's owner "should put your differences behind you—you've been in this business long enough to know that what he is looking for is some green."

B. *Trevillyan's anti-SLAPP motion.*[3]

1. The motion.

After Redick filed the amended complaint, Trevillyan filed his anti-SLAPP motion, in which he argued that all of the allegations concerning him arose out of his litigation or litigation-related activities. In support of the motion, Trevillyan submitted (A) his declaration and exhibits and (B) the declarations of three other defendants.

(A) Trevillyan's declaration.

Trevillyan is an attorney who has represented or currently represents some of the defendants named in the action. He denied all allegations of wrongdoing. He never told Redick that Parklane has an exclusive deal with another dealer; rather, all dealers are permitted to sell mobilehomes at Parklane. "No park owner, dealer, or anyone else that I have represented has ever asked me to evict a resident from a mobilehome community in order to make a space available for a dealer or for the placement of a new mobilehome." He does not solicit dealers to put homes in his client's parks.

Instead, mobilehomes are often abandoned after evictions. The property is usually sold at a public lien sale, but parks sometimes end up with the homes because the value of the mobilehome is less than what is owed in back lien charges. The abandoned homes, like Jacqueline Martens's,[4] are usually left in substandard and uninhabitable condition. Sometimes a dealer purchases the mobilehome after a lien sale for the total amount of

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[3] Trevillyan concurrently filed a demurrer to the amended complaint based on Redick's alleged failure to comply with Civil Code section 1714.10, which provides, in part: "No cause of action against an attorney for a civil conspiracy with his or her client arising from any attempt to contest or compromise a claim or dispute, and which is based upon the attorney's representation of the client, shall be included in a complaint or other pleading unless the court enters an order allowing the pleading that includes the claim for civil conspiracy to be filed after the court determines that the party seeking to file the pleading has established that there is a reasonable probability that the party will prevail in the action." Upon granting Trevillyan's anti-SLAPP motion, the trial court took the demurrer off-calendar as moot. Therefore, that demurrer is not before us on appeal.

[4] Trevillyan submitted illegible photographs of Martens's mobilehome.

attorney fees and back rent owed. "Typically, a dealer purchases the mobilehome from the park owner following a lien sale for the total amount of attorney fees and back rent charges owed and removes the old mobilehome and replaces the unit with a new home. The dealer also may obtain a charitable tax deduction donating the old mobilehome. The park operator does not make money off of an eviction and lien sale and usually the park operator does well simply to break even. For the most part, dealers who want to place a mobilehome in the space are willing to pay the park's back charges in exchange for the old mobilehome." The profit on a new mobilehome after reimbursement to Trevillyan's client is typically $15,000 to $25,000, which does not include tax benefits from a charitable donation of the mobilehome.

There is no standard rate for eviction cases, and Trevillyan charges $150 to $200 per hour. Trevillyan has never given any portion of money paid to him by clients back to a client or their agent or charged an improper or illegal fee to provide a kickback. He has only charged for actual legal work performed.

Trevillyan attached to his declaration, among other things, copies of judgments he has obtained against tenants, including the judgments against Martens and other evictions referenced in the complaint, none of which he asserts have been set aside as unlawful.

(B) The declarations of other defendants.

Three defendants (Mel Johnson, Alan Munitz, and Stanley Wactler) submitted declarations in which they said Redick threatened to sue them unless they agreed to testify that the allegations in the complaint were true.

2. The opposition.

(A) William Ramsey's declaration.

Redick's attorney, William Ramsey, submitted his declaration in support of the opposition to the motion.[5] In that declaration, Ramsey related conversations he had with defendants Mel Johnson and John Maxey. Scott Liebert (another defendant) told Johnson

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[5] The trial court sustained evidentiary objections to the entirety of Ramsey's declaration.

he could have spaces at $50,000 ($20,000 for "improvements" and a $30,000 "space fee") each in advance of the new home being moved into Parklane. Liebert would open up spaces by dreaming up an excuse to evict someone, e.g., not trimming the lawn. He would then hire Trevillyan to evict them. Maxey told Ramsey that Trevillyan would " 'buy the tenant out,' meaning buy their mobilehome, and force them to sell their units to him." Trevillyan threatened tenants and browbeat them into selling their homes to him. Trevillyan bragged he could always get another two or three thousand dollars out of every eviction above what the court awarded him.

(B) Redick, Jr.'s, declaration.

Charles Redick, Jr., said that Trevillyan, in June 2000, told him about a space in Lilly of the Valley mobilehome park and that its manager, Richard Youngblood, "accepts graft." When Redick went to the park, Youngblood gave him an envelope and said, " 'I'll fill these spaces with whoever fills these envelopes the fullest.' " Later, when Redick, Jr., complained to Trevillyan that Scott Liebert of Parklane would not allow him to sell homes in his park, Trevillyan said, " 'I think you and Scott should put your differences behind you—you've been in this business long enough to know that what he is looking for is some green.' " In May 2002, Trevillyan told Redick, Jr., there was a space available in Lilly of the Valley. Redick, Jr., gave the park's manager a check for $6,915.65 ($3,651.65 for back rent and $2,514 plus $750 in attorney fees). Mel Johnson, a defendant, told Redick, Jr., and Ramsey that the fees Trevillyan charged "was simply a way for Mr. Trevillyan and Mr. Liebert to share in the payment of money for space reservations."[6]

(C) Redick, III's, declaration.

Charles W. Redick, III, plaintiff's son and a mobilehome salesperson, said that in January 2004, Trevillyan called him about Jacqueline Martens's space at Boulders. Trevillyan told him the " 'home' was 'already being evicted' " and that the " 'space' was 'already spoken for.' " Trevillyan also told Redick, III, he should offer to buy the home

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6 The trial court sustained an objection to this statement.

of another tenant he was evicting as a pull-out, but that Redick, III, would have to pay Trevillyan's attorney fees, which were " '$3,000 and rising.' "

(D) Julie Campbell's declaration.

Julie Campbell, a former assistant manager at Greenbrier Mobile Estates, stated in her declaration that in December 2003, Denny Leyton, a tenant, was locked out of his mobilehome. Trevillyan instituted eviction proceedings. Thereafter, a mobilehome dealer told Campbell that Trevillyan had sent him over to look at Leyton's mobilehome and that Trevillyan " 'knows all about it.' "[7] When Campbell told the dealer that another dealer already had a claim on the Leyton home, the dealer said there was " 'no way' " someone else could have a claim and that Trevillyan was " 'taking care of it.' "[8] Greenbrier's manager also complained to Campbell that Trevillyan personally engaged in tactics to throw sales to certain dealers and it made her " 'angry' " that he would tell mobilehome dealer Hank Butterfield about evictions Trevillyan performed in the park in order to give Butterfield an early competitive edge.

(E) Hank Butterfield's declaration.

Butterfield, in his declaration and recorded statement, said Parklane would have a lien sale of a mobilehome and say $5,000 was owed in attorney fees and space rent. The amount was usually the same for all homes, and Trevillyan "would get the money, it would be reimbursed through—he wouldn't give any money. It was part of the package. In other words there was $6,000 owed—it was for space rent and attorney fees."[9]

(F) Lester Williams's declaration and recorded statement.

Lester Williams, a mobilehome salesperson, said that David Durant, a defendant-dealer, told him he had an agreement with Parklane to buy four spaces at $5,000 each.

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7 The trial court sustained hearsay objections to these statements.

8 The trial court sustained objections to these statements.

9 The trial court sustained evidentiary objections, including a hearsay objection, to these statements about Trevillyan.

This fee was in addition to the space rental fee. Whenever possible, these fees would be passed onto the mobilehome buyer.

(G) Additional declarations.

Redick also submitted the declaration and recorded statement of Alex Strand, the declaration and recorded statement of William Mills, and the declaration of Mitchell Campbell. In essence, these declarations and statements provided background for some of the allegations in the complaint. Alex Strand, a prospective mobilehome buyer, was told that Advantage, a mobilehome dealer, paid $30,000 for the exclusive right to sell its mobilehomes at Parklane. Advantage mobilehome salespeople similarly told William Mills, a prospective mobilehome buyer, that it paid $30,000 to reserve spots at Parklane and that Advantage had the exclusive right to sell mobilehomes at Parklane. A manager at Greenbier mobilehome park told Mitchell Campbell, an assistant manager, he could get kickbacks from dealers.[10]

3. The trial court's ruling.

The trial court first found that Trevillyan met his initial burden of showing that Redick's amended complaint arises from protected activity. The court found that the gravaman of the pleading is based on Trevillyan's activities as an attorney representing Santa Clarita mobilehome parks and other individuals. It then found that Redick failed to meet its burden of establishing a probability of success. The trial court therefore granted Trevillyan's motion on October 29, 2004.

Redick filed a notice of appeal from the order granting the anti-SLAPP motion on December 28, 2004. After Redick filed its notice of appeal, the trial court granted Trevillyan his attorney fees and costs on January 13, 2005. The trial court entered judgment on March 3, 2005.

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[10] Because none of these declarations or statements referenced Trevillyan, the court sustained relevancy objections to them.

DISCUSSION[11]

I. Trevillyan's motion to dismiss the appeal.

Trevillyan argues that the appeal should be dismissed because Redick dismissed him *before* the trial court issued its order granting the motion. The relevant facts are: The trial court issued a tentative ruling granting Trevillyan's anti-SLAPP motion and took the matter under submission on October 21, 2004. Redick dismissed Trevillyan without prejudice on October 26. The trial court issued its order granting the motion on October 29. Redick filed an appeal from the order granting the anti-SLAPP motion on December 28. Then, on January 13, 2005, the trial court granted Trevillyan's motion for attorney fees. Judgment was entered on March 3.

Relying on our decision in *Liu v. Moore* (1999) 69 Cal.App.4th 745 (*Liu*), Trevillyan contends that the appeal must be dismissed. In *Liu*, the appellant dismissed its cross-complaint without prejudice before the trial court heard the motion to strike the cross-complaint. Respondent nonetheless filed a motion for attorney fees and costs, which the trial court denied. We said "that a defendant who is voluntarily dismissed, with or without prejudice, after filing a section 425.16 motion to strike, is nevertheless entitled to have the merits of the motion heard as a predicate to a determination of the defendant's motion for attorney's fees and costs. . . . [T]he trial court's adjudication of the merits of a defendant's motion to strike is an essential predicate to ruling on the defendant's request for an award of fees and costs. An award of those expenses under section 425.16 is only justified when a defendant demonstrates that plaintiff's action falls within the provisions of subdivision (b) and the plaintiff is unable to establish a reasonable probability of success." (*Id.* at pp. 751-752.)

Liu does not preclude Redick's appeal. We merely held in *Liu*, first, that a plaintiff cannot avoid an award of attorney fees against it by dismissing its complaint

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11 Preliminarily, we must state that the only issue before us on this appeal is whether the trial court was correct in granting Trevillyan's anti-SLAPP motion. We are not ruling on the merits of Redick's claims, as they are not before us.

before defendant's anti-SLAPP motion is heard and granted, and, second, that the dismissed defendant must still establish the merits of the motion as a predicate to any fee award. We did not hold that a plaintiff who has lost an anti-SLAPP motion has no remedy on appeal because the plaintiff dismissed the defendant before the order granting the anti-SLAPP motion was issued. To the contrary, although a plaintiff cannot avoid a judgment against it by voluntarily dismissing a defendant before the defendant's anti-SLAPP motion can be granted, nor can a voluntarily dismissed defendant avoid judicial review of that judgment. Thus, Trevillyan's motion to dismiss must be denied.

II. Trevillyan's anti-SLAPP motion.

A. *Motions to strike under section 425.16.*

The Legislature enacted section 425.16 in an effort to curtail lawsuits brought primarily "to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) To the end of encouraging continued participation in matters of public significance and ensuring participation is not chilled through abuse of the judicial process, section 425.16 provides, "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim." (§ 425.16, subd. (b)(1).)

Section 425.16 sets forth a two step process for determining whether an action is a SLAPP. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88.) "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. [] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)' [Citation.]"[12] (*Ibid.*) To determine whether a defendant has met

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[12] Subdivision (e) states that an " 'act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public

the "arising from" requirement, a court considers the pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based. (§ 425.16, subd. (b)(2).)

If the defendant satisfies its burden of establishing that the challenged cause of action arises from protected activity, then the plaintiff must demonstrate a probability of prevailing on the claim. (§ 425.16, subd. (b)(1).) "In deciding the question of potential merit, the trial court considers the pleadings and evidentiary submissions of both the plaintiff and the defendant (§ 425.16, subd. (b)(2)); though the court does not *weigh* the credibility or comparative probative strength of competing evidence, it should grant the motion if, as a matter of law, the defendant's evidence supporting the motion defeats the plaintiff's attempt to establish evidentiary support for the claim. [Citation.]" (*Wilson v. Parker, Covert & Chidester* (2002) 28 Cal.4th 811, 821.)

The standard of review of an order granting an anti-SLAPP motion is de novo, and we therefore conduct an independent review of the entire record. (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)

B. *Trevillyan did not satisfy his burden of establishing that Redick's causes of action "arise from" protected activity.*

We first determine whether Trevillyan satisfied his burden of establishing that the claims against him "arise from" protected activity. "The phrase 'arising from' in section 425.16, subdivision (b)(1), has been interpreted to refer to 'the act underlying the plaintiff's cause' or 'the act which forms the basis for the plaintiff's cause of action' and

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issue' includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

that such act must have been one done in furtherance of the right of petition or free speech. 'In short, the statutory phrase "cause of action . . . arising from" means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech. [Citation.] In the anti-SLAPP context, the critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech. [Citation.]' [Citation.]" (*Gallimore v. State Farm Fire & Casualty Ins. Co.* (2002) 102 Cal.App.4th 1388, 1397-1398 (*Gallimore*).)

"[W]hen the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute." (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188.) We therefore examine the "principal thrust," "gravaman" or "substance of" plaintiff's cause of action to determine whether the anti-SLAPP statute applies. (*Ibid.*; *Scott v. Metabolife Internat., Inc.* (2004) 115 Cal.App.4th 404, 419; see *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 308 [stating in dicta that "a plaintiff cannot frustrate the purposes of the SLAPP statute through a pleading tactic of combining allegations of protected and nonprotected activity under the label of one 'cause of action' "].)

To determine the principal thrust or gravaman of Redick's causes of action against Trevillyan, we begin with an examination of his amended complaint. At its core, the complaint alleges, under the Cartwright Act,[13] a conspiracy between certain mobilehome

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13 Redick's complaint alleges a violation of the Cartwright Act under, among others, Business and Professions Code section 16720, which provides: "A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes: [¶] (a) To create or carry out restrictions in trade or commerce. [¶] (b) To limit or reduce the production, or increase the price of merchandise or of any commodity. [¶] (c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity. [¶] (d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State. [¶] (e) To make or enter into or execute or

parks and mobilehome dealers to restrain trade. The elements of a civil conspiracy action are (1) the formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from a wrongful act done in furtherance of the common design. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1062 (*Rusheen*).) Under the conspiracy alleged here, mobilehome dealers pay a "kickback" to mobilehome parks for the exclusive right to sell their mobilehomes on available park spaces. (See, e.g., *Suburban Mobile Homes, Inc. v. AMFAC Communities, Inc.* (1980) 101 Cal.App.3d 532 [plaintiff established a prima facie case of an illegal tying arrangement under which mobilehome parks entered into agreements with four dealers who paid the park for the exclusive right to display their mobilehomes in the park].) Parks become "closed," i.e., the owner has reserved all or virtually all of the park's available spaces to one or more specific dealers. These exclusive arrangements have the effect of restraining trade because other dealers, such as Redick, are prohibited from selling homes at the park. The arrangement impacts consumers because only tenants who buy from the exclusive dealer are allowed in the park. In addition, the fee that dealers pay to parks to "reserve" the space is often passed onto the consumer by virtue of inflation of the mobilehome price. Thus, according to

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carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of any of the following: [¶] (1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value. [¶] (2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure. [¶] (3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity. [¶] (4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected."

Redick, this "reservation fee" is also a de facto entry fee that is prohibited under the Mobilehome Residency Law. (See, e.g., Civ. Code, § 798.37.)[14]

This "fee" or "kickback" takes the form of either a flat fee or through a dealer purchase of a pull-out. For example, Redick alleged that Parklane, a defendant park owner, has charged dealers a flat fee of up to $30,000 per park space for the exclusive right to place and sell homes on open spaces, which sometimes become available through evictions Trevillyan institutes. Other than through paying a flat fee, the conspiracy is also sometimes accomplished through "dealer pull-outs." A dealer buys a pull-out—a used and essentially worthless mobilehome—in order to obtain the exclusive right to sell a home on that space. The dealer usually buys the pull-out at what the complaint refers to as a "lien sale." Trevillyan's attorney fees are a part of the lien that the dealer must pay off. Those fees, however, are inflated. Therefore, when the park owner, Trevillyan's client, receives the proceeds from the lien sale, it includes this "kickback."

Based primarily on the allegations concerning Trevillyan's institution of eviction proceedings and his attorney fees, the trial court concluded that the gravaman of the claims against Trevillyan "arise from" protected activity. Although we agree that filing an unlawful detainer action is a right to petition that the SLAPP statute covers (*Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 929 (*Kajima*); § 425.16, subd. (e)(1)), nonetheless, "that a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such" (*Navellier v. Sletten, supra,* 29 Cal.4th at p. 89).

We discussed this distinction between protected activity that merely triggers a cause of action and a cause of action that arises from protected activity in *Gallimore, supra,* 102 Cal.App.4th 1388. In *Gallimore*, the complaint alleged that the California

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14 That section provides, in part: "A homeowner shall not be charged a fee for the entry, installation, hookup, or landscaping as a condition of tenancy except for an actual fee or cost imposed by a local government ordinance or requirement directly related to the occupancy of the specific site upon which the mobilehome is located and not incurred as a portion of the development of the mobilehome park as a whole."

Department of Insurance investigated State Farm and found violations for which the department recommended repayment to policyholders. State Farm, however, failed to adopt the recommendation. Citing that investigation and communications between State Farm and the department occurring during it, plaintiff sued State Farm for mishandling claims. State Farm brought an anti-SLAPP motion, which the trial court granted. We reversed on the ground that the act plaintiff complained of did not "arise from" protected communications. We said that State Farm's argument that the complaint "arises from" the protected communications "confuses the *acts* of alleged misconduct [i.e., mishandling claims] with the *evidence* [the communications] needed to prove them." (*Id.* at p. 1400; see also *Santa Monica Rent Control Bd. v. Pearl Street, LLC* (2003) 109 Cal.App.4th 1308.)

Here too the trial court and respondent confused Trevillyan's alleged acts of misconduct with the evidence cited to prove that misconduct. It is correct that the amended complaint refers to unlawful detainer actions Trevillyan instituted, the filing of which is a protected activity. (*Kajima, supra,* 95 Cal.App.4th at p. 929.) But it is not the *act* of instituting unlawful detainer or eviction proceedings that is at the core of Redick's complaint. Rather, the evictions Trevillyan institutes and the fees he charges are *evidence* of the conspiracy of which Trevillyan is alleged to be a part. That conspiracy allegedly involves instituting evictions in order to open up park spaces so that dealers willing to pay a fee can exclusively reserve them. Evictions and inflated attorney fees are merely tools the conspirators use to achieve the conspiracy's goals.

For example, Trevillyan, according to the complaint, essentially acts as a go-between or broker by soliciting dealers to pay a fee for the exclusive right to sell mobilehomes on spaces that are opened up by evictions he institutes. Trevillyan allegedly once called Redick to tell him about an open space in Lilly of the Valley mobilehome park whose owner, Trevillyan said, " 'accepts graft.' "[15] When Redick went to the park, its owner handed Redick an envelope and said, " 'I'll fill these spaces with

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15 Trevillyan denied making this statement.

whoever fills these envelopes the fullest.' " Another time, Trevillyan called Charles Redick and told him about another open space at Lilly of the Valley mobilehome park. Redick paid $6,915.65 for a pull-out, which included back rent and Trevillyan's allegedly inflated attorney fees. According to a breakdown the owner provided, this figure consisted of back rent in the amount of $3,651.65 and attorney fees in the amount of $3,264, although the fee claim advertised at the lien sale was only $1,500. Redick then was permitted to pull-out the old home and put one of his mobilehomes on the space. Trevillyan told Redick, "See, I told you I would throw you a bone."

Similarly, allegations that Trevillyan participated in the conspiracy by receiving inflated attorney fees do not necessarily bring the complaint within the SLAPP statute's purview. Notwithstanding that a court may have awarded Trevillyan all of his fees in an unlawful detainer action or that they are recovered in a lien sale, Redick can still establish in this action that Trevillyan inflated his fees or charged for work not performed, which somehow resulted in a "kickback" to Trevillyan and/or the park owner, who receives the proceeds from a lien sale at which Trevillyan's inflated fee is included as part of the price.

Thus, whether or not a lien sale is an "official proceeding" for the purposes of section 425.16, subdivision (e)(1) and (2), is really not the point. (See, e.g., *Blackburn v. Brady* (2004) 116 Cal.App.4th 670, 677 ["The ministerial event of a sheriff's sale or auction . . . consists merely of offers and the acceptance of the highest bid made according to certain requirements without any determination based on the exercise of one's free speech or petition rights. As such, it concerns a business dealing or transaction somewhat analogous to the unprotected activity of bidding on public contracts . . ."].) The point is Trevillyan's allegedly inflated attorney fees are disguised kickbacks. The point is not that the inflated fee is paid or claimed in a lien sale.

For these reasons, we believe that *Rusheen, supra*, 37 Cal.4th 1048, which Trevillyan cites, is distinguishable.[16] In *Rusheen*, the pleading at issue was for abuse of process arising from the defendant's, Cohen's, legal representation. The pleading alleged that Cohen made an illegal vexatious litigant motion, failed to serve the complaint properly, took an improper default judgment, permitted his client to execute on a judgment in Nevada, and filed false declarations on the issue of service. (*Id.* at p. 1054.) The trial court granted Cohen's anti-SLAPP motion, but the Court of Appeal reversed. The Supreme Court found that the "gravaman of the action" was the procurement of judgment based on the use of allegedly perjurious declarations of service. (*Id.* at p. 1062.) The court stated, "Extending the litigation privilege to postjudgment enforcement activities that are necessarily related to the allegedly wrongful communicative act is consistent with public policy considerations." (*Id.* at p. 1063.) Because the declarations were subject to the litigation privilege in Civil Code section 47, subdivision (b), Cohen's anti-SLAPP motion was properly granted.

Notwithstanding the suggestion in *Rusheen* that activities such as Trevillyan's that are taken in connection with lien sales are also subject to the litigation privilege, the court in *Rusheen* did note that there were apparently two theories underlying the action, one of which was the actual enforcement by way of levy that the court concluded was privileged. But the other theory was an alleged conspiracy to enforce a judgment obtained through the use of perjured declarations of service which culminated in the noncommunicative conduct of enforcing the judgment. (*Rusheen, supra,* 37 Cal.4th at pp. 1061-1062.) In discounting this second theory as constituting the gravaman of the action, the Supreme Court noted that the Court of Appeal failed to identify any allegedly wrongful conduct by Cohen other than simply filing perjured declarations of service.

In contrast, Redick's complaint does identify wrongful conduct by Trevillyan other than his participation in obtaining unlawful detainer judgments and receipt of

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16 *Rusheen* was published after this matter had been submitted. After oral argument, Trevillyan filed a letter citing *Rusheen*.

attorney fees from lien sales. Aside from attorney fees Trevillyan receives from lien sales, the amended complaint also alleges that, at times, no formal public sale takes place. Rather, Trevillyan simply calls a dealer and tells them what they have to pay, including attorney fees, for a pull-out and to exclusively reserve a space. Therefore, the kickback does not always take place in the context of a lien sale, and to the extent that the funds Trevillyan recovers are not valid attorney fees, his activity is not protected. Moreover, the complaint also alleges that Trevillyan essentially acts as a broker who sets up mobilehome dealers with parks, with the goal of selling the exclusive rights to park spaces, thereby closing the park to competition.

Thus, although Redick's complaint mixes protected activity with unprotected activity, we conclude that the principal thrust of the claims against Trevillyan does not arise from his institution of eviction proceedings and his receipt of attorney fees. The principal thrust of the complaint against Trevillyan is he is a part of a conspiracy that in part uses eviction proceedings and inflated or invalid attorney fees to further a scheme to close mobilehome parks to only those dealers willing and able to pay for the exclusive right to sell their mobilehomes at the parks. The gravaman of Redick's complaint against Trevillyan therefore does not arise from protected activity. Because we reverse the judgment on the ground that Trevillyan failed to establish his initial burden of showing that Redick's complaint against him is subject to the SLAPP statute, we need not address whether Redick established a probability of success on the claim.[17]

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[17] Because we do not address whether Redick established a probability of success on the merits and because we have primarily relied on evidence the trial court ruled admissible, we need not address the trial court's evidentiary rulings. But we nonetheless note that at least some of those rulings were incorrect. For example, the trial court sustained relevancy objections to Lester Williams's, Alex Strand's, Mitchell Campbell's, and William Mills's declarations because they did not reference Trevillyan. They were, however, relevant to establishing the existence of a conspiracy.

DISPOSITION

The motion to dismiss the appeal is denied. The judgment is reversed. Plaintiffs and appellants SC Manufactured Homes, Inc., and Charles W. Redick, Jr., are to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

KITCHING, J.